IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 365 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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SURESH RAMBHAROSE YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 365 of 2002

MR IM MUNSHI for Petitioner No. 1

MR DESAI, APP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/10/2002

ORAL JUDGEMENT

1. This is a revision application preferred against an order passed by learned Additional City Sessions Judge, Court No.16, Ahmedabad, below application Ex.3 in Sessions Case No.59 of 2002. The said application was preferred under Sections 227 and 228 of the Code of Criminal Procedure, praying for discharge of the accused-revisioner.

2. The case against the revisioner is that, he permitted a room adjacent to his flour factory, owned by his father, to be used by other co-accused persons for commission of an offence punishable under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act" for short). It is the case of the prosecution that he had effective control over the room and, therefore, he is punishable under Section 25 of the NDPS Act. It is also the case of the prosecution against the revisioner that he was a party to the drug trafficking and, therefore, he came to be charge-sheeted

along with two other accused persons. After considering the charge sheet papers, an application was tendered before the Trial Court for discharge on the ground that there is no admissible evidence against the revisioner-accused to connect him with the offence. However, the Trial Court rejected the application, which has given rise to the present revision application.

3. Learned Advocate, Mr. Munshi, submitted that excepting statement of co-accused, there is no admissible evidence whatsoever to indicate that the revisioner is involved in trafficking contraband or that he is exclusive owner of the premises or has effective control over the premises, wherefrom the two co-accused persons were apprehended. Mr. Munshi further submitted that, even as per the prosecution case, the contraband was seized from person of the co-accused and not from the premises. It was, therefore, submitted that the Court below has committed an error in rejecting the application.

4. Learned Additional Public Prosecutor, Mr. Desai, has opposed this revision application. He submitted that statement of co-accused would be admissible in evidence in light of provisions contained in Section 53-A of the NDPS Act. He, therefore, urged that the revision may be rejected.

5. Considering rival side contentions, it has to be noted, at the outset, that the learned Additional Public Prosecutor, Mr. Desai, in all fairness, has stated that he has perused the investigation papers and that he has found that there is no evidence other than statement of the co-accused to indicate that the accused is connected with drug trafficking and to show that the accused revisioner had effective control over the premises. He, however, submitted that there is an electric bill collected by the investigating agency, but that bill is in name of father of the revisioner, who had expired long back.

6. Admittedly, the statement of the co-accused relied upon by the prosecution is the one which is allegedly made by the co-accused at the time of the raid. The statement is not signed by the person making the statement as required under Section 53-A of the Act. It would, therefore, be not possible to accept the contention of Mr. Desai that Section 53-A would be applicable so far as statement of co-accused is concerned against the present revisioner. Therefore, there is absolutely no admissible evidence to indicate that the

revisioner was in any way involved in drug trafficking.

7. So far as other fold of accusation that the revisioner had effective control over the premises is concerned, it is undisputed that when raid was conducted, the revisioner was not present. The only material that the prosecution relied upon is the statement of co-accused which, as discussed above, is not admissible and the electricity bill, which is in name of father of the revisioner, who, admittedly, had expired prior to the incident. There is also nothing to indicate that the revisioner is the only heir or successor to the propety at the time of the incident. In absence of any material, it is difficult to accept the contention of Mr. Desai. The Trial Court also has not indicated as to what is the nature of material collected by the investigating agency to show that the revisioner was in effective control of the premises from which the contraband is seized. Under the circumstances, the order impugned herein deserves to be set aside by accepting this revision application.

8. The revision is accepted. The order impugned herein, i.e. order below Ex.3 in Sessions Case No.59 of 2002, dated the 4th September, 2002, is hereby set aside. The revisioner is discharged from Sessions Case No.59 of 2002, pending in the Court of learned Additional Sessions Judge, Court No.16, Ahmedabad. Rule is made absolute.

9. Direct serice is permitted.

[A.L. DAVE, J.]

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